IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

LA.App..No. 477 of 2004(D)

LAR.33/2002 of SUB COURT, CHERTHALA
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APPELLANT: 2ND CLAIMANT

MATHAN VARGHESE, PULLATTU,
PALLIPPURAM.

BY ADV. SRI.P.SANTHALINGAM
SRI.A.D.SHAJAN

RESPONDENTS: CLAIMANTS 1 & 3
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1. KARTHIYAYANI JANAKI,
KUZHUVELITHARA, PALLIPPURAM (DIED)

2. DAKSHAYANI D/O. SARADA, THACHATTU,
CHENNAM PALLIPPURAM MURI,
PALLIPPURAM VILLAGE.

ADDITIONAL RESPONDENT IMPLEADED:
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3. STATE OF KERALA, REPRESENTED BY SPECIAL TAHSILDAR (LA), INDUSTRIAL GROWTH CENTRE, CHERTHALA.

IS IMPLEADED AS ADDITIONAL 3RD RESPONDENT VIDE ORDER DATED 30.11.2006 IN I.A. NO.4424/06.

BY ADV. SRI.H.B.SHENOY
SRI.B.ASHOK SHENOY
SMT.LAKSHMI B.SHENOY
BY GOVERNMENT PLEADER SHRI BASANT BALAJI, R4

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ALONG WITH LAA NO. 660 OF 2004 ON 23.11.2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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L.A.A. NO. 660 OF 2004
AND
L.A.A. NO.477 OF 2004

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Dated this the 23rd day of November, 2007

J U D G M E N T

The dispute in these appeals centres around the land value and other statutory benefits in respect of 0.98 Are of land.

L.A.A. NO.660 OF 2004

2. An extent of 8.07 acres of land comprised in Sy.No.159/4-1/2 of Pallipuram Village of Cherthala Taluk was acquired for a public purpose. Land Acquisition Officer awarded land value at the rate of Rs.2,950/- per Are. As there was dispute regarding the title of that property, the matter was referred to the Sub Court under Section 31(2) of the Land Acquisition Act. Properties originally belonged to one Kuttan Kunjan, who is the first respondent herein. Appellant purchased 9.5 cents of land from Kuttan Kunjan under Exhibit A1 assignment deed. Subsequently, Kuttan Kunjan died. His son Bharathan executed Exhibit A1 in favour of the appellant

for 9.5 cents. An extent of 46.5 cents devolved upon Smt. Dakshayani, additional 4th respondent under Exhibit B1. In Exhibit B1 also it was stated that 9.5 cents was sold to the appellant and the remaining land comprised in the survey number was allotted to Dakshayani. Court below found that the appellant has got title over 9.5 cents. But it was held that when it is converted into metric system the area will be 2.86 Ares. That is an arithmetical mistake. The exact area will be 3.84 Ares.

There were three references, namely, L.A.R. Nos.90, 91 of 2001 and 33 of 2002. In L.A.R.No.90 of 2001 the appellant was allowed to withdraw land value for 2.86 Ares of land. Since he was awarded land value for 2.86 Ares of land in L.A.R. No.90 of 2001, the learned Sub Judge found that the entire balance amount is to be disbursed to Karthiyayani Janaki. It was brought to my notice that on measurement it was found that the properties purchased by the appellant were comprised in Sy.Nos.159/4-1/2 and 159/6. In L.A.R. No.90 of 2001 entire land was acquired and entire compensation for 2.86 Ares of land was paid to the appellant.

He is entitled to get compensation in respect of 0.98 Are more. It is seen that that property is comprised in Sy. No.159/6. There is no mention of that survey number in Exhibit A1 as well as Exhibit B1. But that alone is not sufficient to deny the compensation in respect of 0.98 Are of land to the appellant since the evidence shows that that area was using as a pathway by the appellant. I am of the view that the appellant is entitled to get land value and other statutory benefits in respect of 0.98 Are of land also. But to avoid complications that amount will be awarded L.A.R. No.91 of 2001.

L.A.A. NO. 477 OF 2004

3. I do not find any reason to interfere with the award passed in L.A.R. No.33 of 2002 and the appeal is only to be dismissed.

4. In the result, L.A.A. No.660 of 2004 is allowed in part. The decree passed by the learned Sub Judge is modified. A decree is passed in favour of the appellant authorising him to recover land value with statutory benefits for 0.98 Are oif land comprised in Sy.No.159/6 of Pallipuram Village. The balance amount is awarded to Smt.Dakshayani, third

respondent in the appeal.

In view of the modification of the decree in L.A.R. No.91 of 2001, L.A.A. No.477 of 2004 is dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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L.A.A. NO. 660 OF 2004
AND
L.A.A. NO. 477 OF 2004

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J U D G M E N T

23RD NOVEMBER, 2007